



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 4, 1998

Ms. Sandra C. Joseph  
Open Records Counsel/Disclosure Officer  
Comptroller of Public Accounts  
LBJ State Office Building  
111 East 17th Street  
Austin, Texas 78774

OR98-1121

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114404.

The Comptroller of Public Accounts (the "comptroller") received a request for a variety of information pertaining to Hearing number 35,024. Based on clarification from the requestor, you have submitted the information which you contend is at issue.<sup>1</sup> You inform us that pursuant to Open Records Letter No. 96-1612 (1996), you have provided the requestor with a de-identified copy of the final decision of the hearing at issue. However, you assert that section 552.101 of the Government Code, in conjunction with section 111.006(a)(2) of the Tax Code, excepts some parts of the requested information from required public disclosure. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 111.006(a)(2) provides that information "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2). Accordingly, you must withhold, in their entirety, the Taxpayer's request for a hearing, Exhibit 4a, and the Taxpayer's Reply to the Position Letter, Exhibit 4c, submitted by the taxpayer pursuant to section 111.006(a)(2) of the Tax Code.

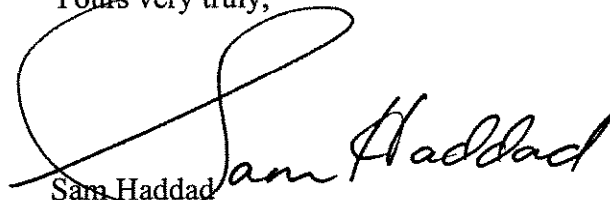
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<sup>1</sup>You explain that you sought clarification from the requestor concerning the requested information. Gov't Code § 552.222; Open Records Decision No. 333 (1982) (ten-day deadline does not run during time that requestor and governmental body attempt to resolve access to records informally and there is legitimate confusion as to scope of request).

However, as for the Position Letter and the Tax Division's Response to Taxpayer's Reply to the Position Letter, Exhibits 4b and 4d respectively, we conclude that the comptroller must withhold only the information that identifies the taxpayer pursuant to section 552.101 of the Government Code. In this way, we believe the business operations of a particular business are protected while the resolutions of tax questions, including the legal issues and related fact findings raised, are available to the public. *See* Open Records Letter No. 96-2203 (1996) (requiring comptroller to de-identify position letters); *cf.* Attorney General Decision H-223 (1974) (requiring comptroller to de-identify administrative hearing decisions under predecessor of Tax Code sections 111.006 and 151.027). Accordingly, we conclude that the comptroller must release the position and response to reply letters to the requestor, but with deletions of all information that identifies the particular taxpayer. We agree that the information you have marked in Exhibits 4b and 4d identifies the taxpayer and is, therefore, confidential under section 111.006(a)(2). *See* Open Records Letter No. 97-2510 (1997) (requiring comptroller to de-identify documents filed in connection with administrative hearing).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 114404

Enclosures: Marked documents

cc: Mr. James D. Penny  
Vinson & Elkins, L.L.P.  
2300 First City Tower  
1001 Fannin Street  
Houston, Texas 77002-6760  
(w/o enclosures)